

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4824 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KABHAI H PATEL

Versus

BHAILALBHAI C PATEL

Appearance:

MR JITENDRA M PATEL for Petitioner

NOTICE SERVED for Respondent No. 1

Ms. B.R. Gajjar, Ld.GOVERNMENT PLEADER for Res. No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 27/04/2000

ORAL JUDGEMENT

Heard Mr. J.M. Patel for the petitioner and Ms.

B.R. Gajjar, Learned AGP for respondent State. None appears on behalf of the respondent No.1.

1. In the present writ petition the petitioner has challenged the decision of the State Government passed in Revision Application No. SSRD/CON 20 of 1989 dated 1-6-1990. It is submitted by learned counsel for the petitioner that, initially the matter was decided by Deputy Collector and having felt aggrieved by the order passed by Deputy Collector dated 29-6-1989 at Annexure-E, petitioner filed the revision application before the State Government. The petitioner after filing revision application before the State Government applied for time to produce documentary evidence to show that he is the owner of the adjacent land and the Law of Fragmentation will not apply in his case. It is further submitted by learned counsel for the petitioner that, due to communal disturbance in Bharuch city, the petitioner could not contact his advocate for a long time and during this period the matter was heard by the State Government and order has been passed.

2. It is submitted by learned counsel for the petitioner that, because of the communal disturbance the petitioner was prevented from producing documentary evidence before the State Government, and as such a wrong decision has been given by the State Government in the revision application. Learned counsel further submitted that, the petitioner was prevented by sufficient cause for not producing the documents before the State Government when revision application was taken up for hearing, and serious injustice has been done to the petitioner in dismissing the revision application.

3. It is further submitted that, had the papers been produced by the petitioner, the decision of the State Government would have been otherwise. Learned counsel consequently submitted that the matter may be sent back to the State Government for a fresh decision after taking evidence that may be produced by the parties.

4. Having regard to the submissions made by learned counsel for the petitioner, I am of the view that the petitioner was prevented from producing documentary evidence because of the disturbance during the period when the case was heard by the State Government. Consequently I am also of the view that an opportunity should be given to the parties to adduce further evidence, both oral and documentary, if necessary, so as to enable the Government to come to a right decision. Accordingly the order passed by the State Government on 1-6-1990 in revision Application No. SSRD/CON 20 of 1989, Annexure-F to the petition is hereby quashed. The case is remanded to the State Government for a fresh

decision of the Revision Application No. SSRD/CON 20 of 1989. State Government is directed to give an opportunity to the parties to produce additional evidence and also allow the parties to raise other points before the State Government in accordance with law. The State Government shall decide the Revision Application on merit and in accordance with law, after hearing the parties. With the aforesaid directions, this writ petition is disposed of. Rule discharged. However, interim relief granted earlier shall continue till a fresh decision is taken by the Government in Revision Application No. SSRD/CON 20 of 1989. No order as to costs.

Dt: 27-4-2000

(P.K. Sarkar, J)

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